CLERK'S OFFICE 26200

55

CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 226.

JOEL W. LOCKWOOD, PETITIONER,

vs.

EXCHANGE BANK OF FORT VALLEY AND F. T. RAPE, TRUSTEE.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED JANUARY 20, 1902.

(18,375.)

20201

(18,375.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 226.

JOEL W. LOCKWOOD, PETITIONER,

vs.

EXCHANGE BANK OF FORT VALLEY AND F. T. RAPE, TRUSTEE.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

INDEX.

	Original.	Print.
Certificate from the United States circuit court of appeals for the fifth circuit	1	1
Statement of the case	1	1
Questions certified	3	3
Clerk's certificate	5	3

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 24, 1902.

1 (Original Filed December 10, 1901. Charles H. Lednum, Clerk.)

United States Circuit Court of Appeals, Fifth Circuit, November Term, 1901.

In the Matter of JOEL W. LOCKWOOD, Bankrupt. No. 1052.

JOEL W. LOCKWOOD, Petitioner,
v.
EXCHANGE BANK OF FORT VALLEY and F. T. RAPE, Trustee, Respondent.

Error on petition for revision from U. S. district court for southern district of Georgia.

Before Pardee, McCormick, and Shelby, circuit judges.

Statement of Case.

On the 23d day of November, 1900, the said Joel W. Lockwood was on his application duly adjudged a bankrupt by the district court of the United States for the southern district of Georgia. On December 6th, 1900, F. T. Rape was duly appointed trustee for said bankrupt; on the 16th day of December, 1900, the said F. T. Rape, trustee, set aside and designated as an exemption all of the property returned by the said bankrupt in his schedule of assets. On the 1st day of January, 1901, the Exchange Bank of Fort Valley, a creditor who had duly proven its debt as an unsecured claim, filed exceptions to the trustee's assignment of homestead and exemption upon the following grounds:

"(*a.*) That said creditor held a contract against the bankrupt in which said bankrupt specially waived and renounced all right to the homestead exemption allowed by the laws of Georgia or the United States. Said waiver is contained in a note constituting contract of indebtedness and was made in accordance with the provisions of the constitution and laws of said State authorizing and empowering the debtor to waive and renounce in writing his right to the benefit of the exemption provided for by the constitution and laws of said State.

(*b.*) That creditor's debt was unsecured save and except so far as a waiver of homestead and exemption may be construed as a
2 security.

(*c.*) That the trustee has set apart all the property of said bankrupt returned by him in bankruptcy.

(*d.*) Under the laws of Georgia, the debtor's exemption cannot be subjected to the payment of a debt containing a waiver of homestead except by putting said debt in judgment, and afterwards causing

execution to issue thereon to be levied on the exempt property in accordance with the provisions of section 2850, *et seq.*, of the Code of Georgia. If bankrupt court should approve trustee's assignment in this case without reserving to petitioner the right to sue his claim and put same in judgment, and without itself giving judgment for said debt, creditor would be left without means of enforcing his rights created and arising out of the aforesaid waiver and would be without remedy.

(*e.*) Creditor therefore prays equitable relief and such decree as will protect his rights, that the homestead be set aside and trustee be required to take charge of and administer the property of said bankrupt so set apart, except so much as cannot be waived for the benefit of creditors holding waiver contracts."

To these exceptions of the creditor the bankrupt duly filed a demurrer on the following grounds:

"(*a.*) That said exceptions are wholly insufficient in law to defeat the report of the trustee.

(*b.*) That the exceptions made are not such as under the laws of Georgia will defeat the setting apart of the exemption, and furnish no reason why the trustee should not assign the exemption.

(*c.*) That the bankrupt court has no jurisdiction over exempted property and no authority to administer the same.

(*d.*) That there is no authority of law for the exceptions made, nor for the relief sought."

The referee, Hon. Shelby Myrick, overruled the aforesaid demurrer and directed the trustee to carve out of the said exemption of property a portion of the same amounting to $300.00, which was to be free from the claims of all creditors. The residue of the exempted property was to be sold and the proceeds held by the trustee for the benefit of creditors holding waiver notes. The bankrupt was ordered to yield possession to the trustee for the purpose of carrying out this order. The referee, at the request of bankrupt, certified the record in said case, together with his decision thereon, to the Honorable Emory Speer, judge of the district court of said district, for final determination. On the 30th of March, 1901, said case came on regularly to be tried before said district judge, and after hearing argument of counsel, his honor Judge Emory Speer, held and decided and adjudged that the aforesaid exceptions to the determinations and report of the trustee be sustained, and that the exemptions set apart by the trustee in his said report be denied and refused
3 to the said bankrupt, save and except the item of household furniture and wearing apparel, and that the said bankrupt was not entitled to an exemption as claimed by him by reason of having waived and renounced in writing his rights thereto in accordance with the constitution and laws of the State of Georgia.

This judgment and decision of the district court is the one complained of, and which is sought to be revised and corrected.

Petitioner then excepted to said decision and decree and now excepts to the same, and says that the same was error, and says that the court erred in not sustaining his demurrer to creditor's objection

upon all the grounds therein stated, and in holding and deciding that the bankrupt court had jurisdiction over exempted property and authority to administer the same, and in refusing and denying the bankrupt his homestead exemption.

A petition for the revision of the said proceedings in the district court of the southern district of Georgia having been allowed, the same came on for hearing in this court and was argued, whereupon this court desiring the instruction of the honorable Supreme Court of the United States for the proper decision of the matters pending, certifies to said Supreme Court the following questions, to wit:

1st. Under the bankruptcy act of 1898, does the title to the property of the bankrupt which is exempt from seizure and sale by execution under the laws of the State of the bankrupt's residence and domicile, and which property is claimed by the bankrupt as so exempt, vest in the trustee of the bankrupt's estate for purposes of administration and distribution in favor of lienholders or holders of waiver notes?

2d. Has the United States district court, sitting in bankruptcy in the State of Georgia, jurisdiction to administer the property of an adjudicated bankrupt which is exempt under the laws of the State, and which is claimed by the bankrupt, in favor of a creditor who proves his debt as an unsecured claim, and who holds and proves a note of the bankrupt in which the bankrupt specially waives all
4 right to the homestead and exemption allowed by the laws of the State of Georgia?

For further certainty and information a printed copy of the transcript will be transmitted with this certificate.

5 United States Circuit Court of Appeals for the Fifth Circuit.

UNITED STATES OF AMERICA, *Fifth Judicial Circuit,* } *ss:*

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing statement of facts and certificate in the case of Joel W. Lockwood, petitioner *versus* Exchange Bank of Fort Valley and F. T. Rape as trustee respondent No. 1052 on the docket of said court, was duly filed and entered of record in my office by order of said court, and as directed by said court, the certificate is by me forwarded to the Supreme Court of the United States for its action thereon—

And I further certify that accompanying this, is a printed copy of the record in said case, which I have identified by endorsing thereon and signing officially as follows, to wit: "Identified as a printed copy of the record in No. 1052, Joel W. Lockwood *v.* Exchange Bank of Fort Valley, *et al.*"

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said court, at the city of New Orleans, Louisiana, this December 16th, 1901.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit
Court of Appeals for the Fifth Circuit.

Endorsed on cover: File No. 18,375. U. S. C. C. of appeals, 5th circuit. Term No. 226. Joel W. Lockwood, petitioner, *vs.* Exchange Bank of Fort Valley and F. T. Rape, trustee. Filed January 20", 1902.